THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO. 1157 OF 2004

Date:17.11.2006

Between:

M. Sudarsahanam.

…. Appellant

The Director, National Institute of Technology (REC), Warangal and other.

….Respondents.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO. 1157 OF 2004

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal is preferred by the erstwhile Registrar of the National Institute of Technology, aggrieved by the order in W.P. No. 23913 of 2003 dated 09.12.2003, wherein a challenge to the proceedings of the 1st respondent dated 31.10.2003 was rejected and the appellant's request, for absorption in the post of Registrar on a regular basis, was declined.

Facts, in brief, are that Notification No. 1 of 1999 was issued by the National Institute of Technology, Warangal, (hitherto called the Regional Engineering College, Warangal), inviting applications on an All India Level to fill up the post of Registrar on a full time and regular basis. The appellant submitted his application and was called for an interview on 29.06.2000. The selection committee, having considered his candidature, selected him to the post of Registrar. The appellant was issued orders dated 21.08.2000 appointing him on a tenure basis for a period of three years, though the post notified was on a full-time and a regular basis. The appellant, who at the relevant time was working as the Registrar of the Dr. B.R. Ambedkar University, informed the respondents that, on being relieved, he would report for duty. He informed the Principal of the Regional Engineering College that he

was accepting the offer of appointment, as a Registrar, with the clear understanding that the orders dated 21.08.2000 would be amended duly deleting the words “on tenure basis for a period of three years”. According to the respondents, the appellant was informed thereafter that the selection committee had interviewed him, and had recommended his appointment on a tenure basis for a period of three years, and that the Board of Governors, in its meeting held on 09.09.2003, had resolved that the service conditions of the Registrar shall be governed in accordance with the recommendations of the selection committee appointing him on a tenure basis and as such the question of amending the orders did not arise. The appellant would, however, dispute any such letter having been issued by the respondents. Be that as it may, the appellant was relieved by the Dr. B.R. Ambedkar University on 23.08.2000 to enable him to join duty as the Registrar of the Regional Engineering College, Warangal. At the appellant’s request, following his tenure appointment with the respondent institute, his lien, as the Registrar of the Dr. B.R. Ambedkar University, was retained. On completion of his three years tenure the appellant, vide letters dated 05.12.2002 and 26.03.2003, sought regularisation/ absorption in the post of Registrar. He was informed by the Central Government, in its letter dated 30.04.2003, that such powers were conferred on the Board of Governors of the Institute and that the proposal be placed in its next meeting. Consequent thereto the appellant’s representation, seeking regularization of his services, was placed before the Chairman of the Board of Governors, by the Director of Institute who strongly recommended the appellant’s case for regularization. The appellant also submitted a representation to the Chairman on

22.07.2003. His tenure appointment, which was to expire on 23.08.2003, was extended by a further period of three months on the same terms and conditions, vide proceedings dated 22.08.2003. The appellant was informed, vide letter of the 1st respondent dated 31.10.2003, that his request for absorption was placed before the Board of Governors and that the Board, in its meeting held on 09.09.2003, had resolved that the service conditions of the Registrar shall be governed in accordance with the recommendations of the selection committee and that he would not be absorbed in the present post. The Board of Governors however ratified the action taken by the Chairman in extending his tenure upto 23.11.2003 and that his leave salary, pension and other benefits should be considered as per rules at his request. Aggrieved thereby, the appellant herein approached this Court.

This Court, by order in W.P. No. 23913 of 2003 dated 09.12.2000, held that the decision of the Regional Engineering College in appointing him on a tenure basis, for a period of three years, vide proceedings dated 21.08.2003, suffered from no infirmity warranting its interference. With regards his leave salary, gratuity, pension etc., the learned judge noted that his grievance had been remedied by appropriate administrative measures. The learned judge, upon holding that the rejection of the appellant's representation by the 1st respondent in its communication dated 31.10.2003 was impeccable, dismissed the writ petition.

Sri V. Rajagopal Reddy, learned Counsel for the appellant, would refer to the notification inviting applications for the post of Registrar and submit that, since the notification prescribed that the post of Registrar should be filled up by the selection committee on

a full time and regular basis, the respondents had acted illegally in appointing him on a tenure basis for a period of three years. Learned Counsel would submit that, even at the time of acceptance, the appellant had, vide letter dated 23.08.2000, informed that he was accepting the offer of appointment with the clear understanding that the words, "on a tenure basis for a period of three years", would be deleted and it could not, therefore, be held that he had acquiesced to his appointment on a tenure basis. Learned Counsel would submit that the learned judge had erred in recording a finding that the appellant did not possess the requisite qualifications and, since appointment of the appellant on a tenure basis was contrary to the notification and in as much as the notification required the Registrar to be appointed on a full time and regular basis, the appellant was entitled to be absorbed as a Registrar in the respondent Institute. Learned Counsel would refer to the 46th Executive Committee meeting of the Regional Engineering College dated 20.01.2001 wherein the Executive Committee examined the appellant's request and noted that the post of Registrar was a permanent one and appointment was to be made on a permanent basis but not on a tenure basis and that the advertisement for the said post had been issued accordingly. However the Executive Committee noted that the request of the appellant would be examined in due course. Learned Counsel would also refer to the proceedings of the Government of India dated 11.02.2002 whereby the Principal of Regional Engineering College was informed that the appellant's request to be absorbed in the post of Registrar on a regular basis was an administrative matter and that he may be absorbed permanently by the Regional Engineering College only if the recruitment rules for the post of

Registrar permitted such absorption. Learned Counsel would also refer to the Government of India letter dated 11.02.2002 addressed to the Principal, Regional Engineering College, wherein the fact that the Board had deferred consideration relating to the absorption of the appellant for the post of Registrar was taken note of. The Principal, Regional Engineering College was requested to place the comments of the government, vide letter dated 03.05.2002, before the Board to consider this issue. Learned Counsel would submit that, since the power to absorb the services of the appellant was conferred on the Board of Governors and as the notification required the appellant to be appointed on a full time regular basis, he should have been absorbed as the Registrar of the Regional Engineering College and that failure of the respondents to do so was arbitrary and illegal. Learned Counsel would place reliance on **K. Shekar Vs. V. Indiramma**[1], **N.T. Bevin Katti Vs. Karnataka Public Service Commission**[2] and **Union of India Vs. N.P. Dhamania**[3].

Sri D.V. Seetharam Murthy, learned Counsel for the respondent-Institute, on the other hand, while fairly admitting that the appellant possessed the qualifications required for the post of Registrar, would submit that under the notification the respondents had reserved to themselves the power not to fill up any vacancy or to offer a lower post than what had been applied for. According to the learned Counsel since the selection committee, in its wisdom, had decided to appoint the appellant on a tenure basis, he was not entitled to seek absorption to the post of Registrar of the respondent-institution. Learned Counsel would submit that nothing

prevented the appellant from refusing to accept the offer of the respondent institute and decline to join the post of Registrar on a tenure basis for a period of three years. According to the learned Counsel, having accepted and joined the post of Registrar on a tenure basis, it was not open to the appellant to now turn around and contend that, in the first place, he could not have been appointed as a Registrar on a tenure basis. Learned Counsel would submit that the appellant, being well aware that his appointment was only on a tenure basis, had retained his lien in the post of Registrar of the Dr. B.R. Ambedkar University and, in fact, after completion of his tenure as a Registrar of the Regional Engineering College, Warangal, had rejoined services as the Registrar of the Dr. B.R. Ambedkar University. Learned Counsel would submit that the appellant's letter dated 23.08.2000 informing the respondents that he was accepting the appointment with the understanding that the words "on tenure basis for a period of three years" should be deleted, was rejected by the respondent in its letter No. C3/I-115/2000/3686 in August 2000 itself. Learned Counsel would submit that, even if this letter were to be ignored, the fact remained that the respondent University had not acted upon the appellant's letter dated 23.08.2000 and did not delete the words "on a tenure basis for a period of three years". According to the learned Counsel, since the appointment of the appellant, on a tenure basis for a period of three years, was a contract of employment, it was not open to him to unilaterally seek amendment thereof or to contend that the words "on tenure basis for a period of three years" should be deleted at his mere asking. Learned Counsel would submit that the learned judge had rightly found no merit in the writ petition and was justified in negativing

the appellant's request for absorption as devoid of merit.

Before the rival contentions are examined, it is necessary to note that, though the notification required the post of Registrar to be filled up by selection through open advertisement on a full time and regular basis on an All India Level, under para-7 of the notification, the respondent-institute had reserved its rights not to fill up the vacancies or to offer lower posts. Para-7 of the notification reads thus:

> "The advertisement is to be understood as merely an indication of existing vacancies or vacancies likely to arise. The College reserves the right not to fill any of the vacancies notified depending on the exigencies of the situation. Candidates may be offered lower posts than the posts they have applied for. The College also reserves the right to shortlist the applicants to be called for interview and also to fill up the consequential vacancies arising out of the selection process."

The selection committee, in its wisdom, had recommended that the appellant be appointed on a tenure basis for a period of three years. Whatever be the reasons which weighed with the selection committee in so prescribing a tenure of three years for appointment of the appellant as a Registrar, it is not for this Court to sit in appeal, over such decisions of the selection committee, in proceedings under Article 226 of the Constitution of India. If the appellant was of the view that he should have been appointed only on a full time regular basis, and not on tenure basis, it was always open for him to decline the offer and to have refused to join the respondent institute. Having joined the post of Registrar on a tenure basis, and having served the University for a period of three years, it is not open to the appellant to now turn around and contend that, since his very appointment on a tenure basis was contrary to the notification, he is entitled to seek absorption in the post of Registrar of the Institute. Even if the appellant's

contention, that his very appointment is contrary to the notification, is to be accepted then his initial appointment as a Registrar on a tenure basis must itself be held to be illegal, in which event also no right accrues in his favour to seek absorption as a Registrar of the respondent Institute.

Now to the judgment relied upon by the learned Counsel for the appellant. In **K. Shekar**[1], the Supreme Court observed:

"….. If we start with the root, there can be no doubt that the appellants appointment as Lecturer in 1986 was not in terms of the advertisement pursuant to which he had applied. **Before any appointment could be made to the post of Lecturer, the post should have been advertised together with the eligibility criteria in respect thereof. The submission of NIMHANS was that since the post of Lecturer was lower than an Assistant Professors, it was not necessary to be advertised. If this argument was accepted, it would amount to violation of Articles 14 and 16. The absence of an advertisement necessarily deprived persons who could have applied for the post, of the opportunity of applying for the post. The clause in the advertisement which enabled the Selection Committee to recommend the candidate for a lower post if the candidate was not found suitable to fill the post applied for, did not give NIMHANS the power to appoint the recommended candidate against an unadvertised post.** Significantly, in the other advertisements on record dated 6-12-1986 and 1-6-1989, the post of Assistant Professor and the post of Lecturer were both advertised.

The clause, far from allowing NIMHANS the power to dispense with the advertisement of any lower post as a precondition to appointment, indicates that only eligible persons could be considered for selection. Once the barrier of eligibility was crossed, the Selection Committee could consider the suitability of the candidate for the post advertised. It follows that the appellant should not have been called for interview at all. His application clearly showed that he did not fulfil the requisite eligibility criteria for the post he had applied for, because he lacked any post-doctorate experience at all. The power in the Selection Committee to relax the eligibility criteria cannot be read as including the power to do away with the criteria altogether.

Then again, the post which was advertised was a temporary tenure post and yet by virtue of the corrigendum, the posts were made permanent. It is true that the advertisement stated that there was a likelihood of some of the advertised posts being made permanent after three years. All that this meant was that the posts would remain temporary tenure posts for three years after which there was a possibility of the appointments being made permanent. **When the post itself was made permanent from its very**

inception by the corrigendum issued several months later, the post should have been readvertised so as to give fair notice to all prospective candidates regarding the nature of the vacancy to be filled. It was not open to NIMHANS to retrospectively and subsequent to the appointment change the nature of post advertised by issuing the corrigendum……..” (emphasis supplied)

In **K. Shekar**[1], the National Institute of Mental Health and Neuro Sciences (NIMHANS) had issued an advertisement to fill up Research Project Posts in the center for a period of three years and it was informed that some posts were likely to be made permanent after three years. Of the several posts advertised, one was the post of Assistant Professor (Psychiatric Social Work). The Notification provided that, if a suitable candidate was not found, the Selection Committee could recommend a candidate for a lower post. The Selection Committee did not appoint Sri K. Shekar as an Assistant Professor but appointed him as a lecturer, a post which did not even form part of the advertisement. He was issued a letter of appointment informing him that the post was temporary and renewable on a year to year basis and that he would be on probation for a period of three years from the date of appointment “which was liable to be extended or curtailed at the discretion of the competent authority”. A second advertisement was issued by NIMHANS inviting applications for various posts including that of lecturer in Psychiatric Social Work. Though both the appellant and the 1st respondent applied, the post was, however, not filled up. Thereafter the petitioner’s initial appointment was corrected and for the words ‘the temporary tenure appointment’, the words “post is permanent but the appointment is on officiating basis” were substituted. A

corrigendum was added that, on completion of the tenure appointment at the Centre, the appointees would revert back to the service in the respective departments at NIMHANS and that the services rendered by them would count for seniority in the service from the date of joining the post in the Centre. As a result of the corrigendum, Sri K. Sekhar's temporary appointment, as a Lecturer with the Centre, became permanent. Consequently he was re-designated as an Assistant Professor though he continued to serve in the Centre. He was appointed as an Assistant Professor (Psychiatric Social Work) in NIMHANS in 1990. The 1st respondent filed a writ petition challenging the appointment of Sri K. Sekhar as an Assistant Professor by converting the temporary post in the Research Project into a permanent post. The learned Single Judge, of the Karnataka High Court, held that Sri K. Sekhar's appointment as a lecturer, pursuant to the advertisement issued on 20.09.1996, was invalid since the post of lecturer had not been advertised. The Learned Single Judge held that his selection was a fraud on the power of NIMHANS. The Division bench of the Karnataka High Court upheld the order of the learned Single Judge. The Apex Court affirmed the decision of the High Court, but modified the order. The relevant portion of the order of the Apex Court reads thus:

> "Accordingly, while affirming the decision of the High Court, we modify it to the extent that the actual experience gained by the appellant by virtue of his appointment as Assistant Professor may be taken into account if the appellant applies pursuant to any further advertisement that may be issued by NIMHANS for the post of Assistant Professor in the Department of Psychiatric Social work."

This judgment is of no assistance to the appellant herein to contend that since his appointment on a tenure basis was contrary

to the notification, he was required to be absorbed as a Registrar of the respondent institute. In **K. Shekar**[1], the appointment as a lecturer, in a post which was not advertised was held to be illegal and the appointment set aside. In view of the law laid down in **K. Shekar**[1] since the appellant's appointment as a Registrar on a tenure basis, was contrary to the advertisement, his very appointment must be held to be illegal. We, however, do not propose to examine this aspect any further since no challenge has been made, to the appellant's initial appointment as a Registrar on a tenure basis, by any other candidate and it is the appellant himself who places reliance on this portion of the Notification to seek absorption into the services of the respondent institute. Since no direction was given by the Apex Court in **K. Shekar**[1] to absorb the services of such an employee, reliance placed on the said judgments is of no avail.

In **N.T. Bevin Katti**[2], the Apex Court held that a candidate is entitled to be considered for selection in accordance with the relevant rules and the terms contained in the advertisement. No rule which mandates the respondent institute to absorb the services of an employee, who is appointed on a tenure basis for a fixed period, has been brought to our notice. In the absence of any legal requirement, necessitating the respondent institute to absorb the services of employees who were appointed on a tenure basis, no mandamus can be issued directing them to do so.

In **N.P. Dhamania**[3], the Apex Court held that the recommendations of the selection committee are advisory in nature, that such recommendations are not binding on the appointing authority, and that it was open to the appointing

authority to differ from such recommendations in public interest. While it was always open to the respondents to differ with the recommendations of the selection committee, it was also open for it to concur with such recommendations. The appointing authority, in its wisdom, chose to concur with the recommendations of the selection committee and appoint the appellant on a tenure basis. It cannot be said that the action of the respondent institute, in appointing the appellant-petitioner on a tenure basis, is arbitrary and illegal.

We see no reason to interfere with the order of the Learned Single Judge. We, however, note that the Apex Court in **K. Shekar**[1], while confirming the order of the Karnataka High Court wherein it was held that the appointment of the appellant, contrary to the advertisement, was illegal, had held that the actual experience gained by him by virtue of his appointment may be taken into account, if he applied pursuant to any future advertisement that may be issued by the Institute. The only modification which we, therefore, make, to the order of the Learned Single Judge, is that in case the respondent institute issues any advertisement in future inviting applications to fill up the post of Registrar and, in case the appellant applies and fulfills the eligibility criteria, the respondent institute shall take into account the experience gained by the appellant, as a Registrar of the Institute on tenure basis for a period of three years, and thereafter consider the relative merits of the applicants and make appointment, to the post of Registrar, in accordance with law.

Subject to the above observations, the Writ Appeal fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -11-2006

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RAMESH

RANGANATHAN,J

MRKR

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[1] AIR 2002 SC 1230

[2] AIR 1990 SC 1233

[3] AIR 1995 SC 568